**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR**

**MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929**

**MFA.No. 648 of 2001()**
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**OPMV.566/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA**
**.....**

**APPELLANT - 3RD RESPONDENT:**
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**THE NEW INDIA ASSURANCE CO. LTD.,**
**REPRESENTED BY ITS ASSISTANT**
**ADMINISTRATIVE OFFICER, REGIONAL**
**OFFICE, KANDAMKULATHY TOWERS,**
**M.G. ROAD, KOCHI - 6982 011.**

**BY ADV. SRI.VPK.PANICKER**

**RESPONDENTS - CLAIMANTS & RESPONDENTS:**
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1. **K.J. DEVASSIA, 42 YEARS, S/O. JOSEPH KALLADAYIL OTTAPLAVU, PALUKACHI, KOTTIYOOR P.O., KOTTIYOOR AMSOM DESOM, THALASSERY TALUK, KANNUR DISTRICT.**

2. **LEELAMMA ALIAS ELIKUTTY, 40 YEARS, D/O. JOSEPH KALLADAYIL, DO. DO.**

3. **THANKAMMA ALIAS ANNAMMA, 38 YEARS, DO. DO. DO.**

4. **MARY ALIAS MARIAM, 36 YEARS, DO. DO. DO.**

5. **CICILY ALIAS THRESSIA, 34 YEARS, DO. DO. DO.**

**6. MOLY ALIAS ALPHONS, 30 YEARS, DO. DO. DO.**

**7. SALEEM ALIAS ABDUL SALEEM, 23 YEARS,
S/O. KUNJALANKUTTY, KUDUKKIL, KARUVANGADF,
MAJAPPARA, NARIKUNDU P.O., AMBALAVAYAL.**

**8. V.K. CHATHUKKUTTY, S/O. KANARAN, '
VALIYAKADAVATH HOUSE, IRINGAL P.O.,
QUILANDY.**

**BY ADV. SRI.P.CHADRASEKHAR
SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ORDER ON C.M.P. NO. 5431 OF 2001 IN**

**M.F.A. NO. 648 OF 2001**

**CLOSED.**

**9.4.2007** **ID/- K. PADMANABHAN NAIR, JUDGE.**

**K. PADMANABHAN NAIR, J.**

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M.F.A. NO. 648 OF 2001

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Dated this the 9th day of April, 2007

**J U D G M E N T**

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The Insurer in O.P(MV) No.566 of 1993 on the file of the Motor Accidents Claims Triabunal, Wayanad, is the appellant. Appeal is filed against the interim award passed by the Tribunal by which the Tribunal directed the Insurer to pay an amount of Rs.50,000/- to the respondents.

2. One Sister Sofiya of S.H. Congregation, Mercy Home Convent, Anappara, Chulliode P.o., Wayanad District met with a road traffic accident 31.3.1998. She succumbed to the injuries sustained in that accident. Respondents 1 to 6, who are the near relations of the deceased, filed the Original Petition claiming a compensation of Rs.6,00,000/-. In the said petition they have filed I.A. No.1374 of 1999 for interim award under Section 140 of the Motor Vehicles Act. Prayer was opposed by the appellant on the ground that since the deceased was a Nun, her heirs cannot maintain an action for compensation. Tribunal did not consider

that issue, but directed the Insurer to deposit Rs.50,000/-. Challenging that interim award the Tribunal, this appeal is filed.

3. Learned counsel for the appellant has argued that the position is no more res integra in view of the principles laid down in **Oriental Ins. Co. Ltd., V. Mother Superior S.H.C.** (1994(1) KLT 868). It is submitted that a Division Bench of this Court has held that heirs of a Nun are not entitled to claim compensation on account of the death of the Nun in road traffic accident. Learned counsel for the respondents submitted that the principles laid down in that case have no application to the facts of the present case. It is submitted that before a person who took oath to become a Nun will have to undergo probation for six years and only after that period she will be given perpetual oath and in this case the perpetual oath was not administered to the deceased. The Tribunal ought to have considered the said issue together with the Original Petition and disposed of the matter without awarding an interim compensation. For that purpose, the interim award passed by the Tribunal is to be set aside.

In the result, the appeal is allowed. The award passed by the Tribunal on 16.3.2001 is set aside. The Tribunal is directed to dispose of the Original Petition itself as expeditiously as possible. I make it clear that I am not expressing any opinion whether the respondents are entitled to receive the compensation or not. That is a matter to be decided by the Tribunal. Being an old case, the Tribunal shall take every efforts to dispose of the Original Petition as expeditiously as possible, at any rate, within 4 months from the date of receipt of a copy of this judgment.

**K. PADMANABHAN NAIR, JUDGE.**

**vsv**

**K. PADMANABHAN NAIR, J.**

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**M.F.A. NO. 648 OF 2001**

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**J U D G M E N T**

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**9TH APRIL, 2007**